



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

fendant actually appreciates the situation and negligently fails to avoid the accident. *Cavanaugh v. Boston & Maine R. Co.*, 76 N. H. 68, 79 Atl. 694; *Harrington v. Los Angeles Ry. Co.*, 140 Cal. 514, 74 Pac. 15; *Kelley v. Chicago, B. & Q. R. Co.*, 118 Ia. 387, 92 N. W. 45. The plaintiff's own ability to prevent the injury makes it impossible to reach this result on any correct theory of "last clear chance." *Butler v. Rockland, T. & C. St. Ry. Co.*, 99 Me. 149, 58 Atl. 775; *Nehring v. Connecticut Co.*, 86 Conn. 109, 84 Atl. 301, 524. Of course, if the defendant's conduct were wilful or wanton, contributory negligence would be immaterial. *Aiken v. Holyoke Street Ry. Co.*, 184 Mass. 269, 68 N. E. 238. But when the defendant is merely negligent with reference to the danger, even when seen, the only ground for recovery appears to be that of the two concurrent negligences, the defendant's is the more culpable. This revival of the discredited doctrine of comparative negligence, if it is to be accepted at all, must certainly be limited, as in the principal case, to situations where the danger is actually seen by the defendant. For where both parties are merely inattentive, the comparison cannot be unfavorable to the defendant. Even in this form, however, the doctrine is a serious encroachment upon the defense of contributory negligence.

CORPORATIONS — CAPITAL, STOCK AND DIVIDENDS — RIGHT OF PREFERRED STOCKHOLDERS TO OBJECT TO EXTRAORDINARY DIVIDENDS.— The defendant corporation declared an extraordinary dividend on common stock from the proceeds of the sale of certain assets. Preferred stock was entitled to only four per cent dividends. The plaintiff, a preferred stockholder, seeks to enjoin the distribution as dividends on the ground that these assets were capital. *Held*, that the dividends are proper. *Equitable Life Assurance Society v. Union Pacific R. Co.*, N. Y. L. J. 25 (N. Y. Sup. Ct., April 2, 1914).

If dividends are proper, the directors have discretion whether to declare any or not. *McKean v. Biddle*, 181 Pa. 361, 37 Atl. 528; *Field v. Lamson & Goodnow Mfg. Co.*, 162 Mass. 388, 38 N. E. 1126. It is generally stated that dividends cannot be paid out of capital, but only out of profits. See *In re Exchange Banking Co.*, 21 Ch. Div. 519, 526; *Painesville & Hudson R. Co. v. King*, 17 Oh. St. 534, 541. But to make the propriety of dividends depend on what might be called capital, and what profits, under various systems of bookkeeping, would be inexpedient. Hence the test actually adopted seems to be that, except for mining and similar corporations, dividends are proper when the assets of the company exceed the liabilities including outstanding stock. *Lubbock v. British Bank of South America*, [1892] 2 Ch. Div. 198; *Hazeltine v. Belfast & Moosehead Lake R. Co.*, 79 Me. 411, 10 Atl. 328. Dividends may be issued from this surplus whether it comes from income or sales of property increased in value. *Hazeltine v. Belfast & Moosehead Lake R. Co.*, *supra*; *Lubbock v. British Bank of South America*, *supra*. See *Mackintosh v. Flint & P. M. R. Co.*, 34 Fed. 582, 605. The rights of preferred and common stockholders *inter se* depend on the articles of association. *Elkins v. Camden & Atlantic R. Co.*, 36 N. J. Eq. 233; *Scott v. Baltimore & Ohio R. Co.*, 93 Md. 475, 49 Atl. 327. In the principal case the articles of association provided that the preferred stock should have no share in the "profits" above four per cent. This language would seem to require the same construction here as when used by the courts in determining the propriety of dividends. On winding up a corporation, it has been held that in the absence of express provision, the assets will be distributed equally between preferred and common shareholders. *Sumrall v. Commercial Building Trusts*, 106 Ky. 260, 50 S. W. 69; *In re North West Argentine Ry. Co.*, [1900] 2 Ch. 882. How the articles of association in the principal case would be construed as regards the division of assets in such a situation, is doubtful. But as the principal case concerned dividends, the decision seems clearly correct.